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China Report

POLITICAL, SOCIOLOGICAL AND MILITARY AFFAIRS

PRC STATE COUNCIL BULLETIN

No 17, 30 JUNE 1985

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PRC STATE COUNCIL BULLETIN

No 17, 30 JUNE 1985

Beijing ZHONGHUA RENMIN GONGHEGUO GUOWUYUAN GONGBAO [PRC STATE COUNCIL BULLETIN] in Chinese No 17, 30 Jun 85

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CONTENTS

PROVISIONAL REGULATIONS ON THIS TOPIC ISSUED BY STATE ECONOMIC COMMISSION, PLANNING COMMISSION, MINISTER OF WATER RESOURCES AND ELECTRIC POWER, AND STATE PRICES BUREAU, 23 APRIL 85

Beijing STATE COUNCIL BULLETIN in Chinese No 17, 30 Jun 85 pp 531-534

[Text] To speed up the construction of electric power projects, invigorate the electric power industry, and manage the work of generating and supplying electric power we have, in accordance with instructions from leading comrades of the State Council, decided to switch from centralized construction of electric power projects and unified prices of electric power to encouraging localities, departments and enterprises to invest in the construction of power plants and permit a variety of charges on the supply of electricity, thus meeting demands resulting from the development of the national economy. We now promulgate the following regulations on relevant problems:

1. On raising capital for electric power projects. This can be classified in two methods: raising capital for expansion or construction of power plants; and purchasing the right to use electric power, turning this portion of investment into funds for the construction of electric power projects.

A) Methods of raising funds for expansion and construction of power plants:

1) The power plants or arrays of generators constructed by pooled funds can have two forms of ownership: in one, the units have contributed funds share ownership in accordance with the proportion of funds contributed. This proportion is to remain unchanged for a long time and profits are shared in accordance with this proportion. In the other, the ownership of the assets belongs to the power supply network, which uses the profits earned by power production to repay by installments the principal and interest of the investment. In both methods, the units that have contributed the funds can enjoy the right to use electric power in proportion to their investment and this will remain unchanged for 20 years.

2) Units that contribute funds can set up a joint venture company to independently run power plants that have been built with their funds. This company can sign economic contracts of power supply and consumption with the power network or assign the administration and management of the plant to the network.

3) Beginning from the year when the power plant or arrays of generators that have been built with pooled funds is put into operation, it can use its newly increased pre-tax profits and 70 to 80 percent of its basic depreciation funds to repay the principal and interest of the funds.

4) In case that the power plant or arrays of generators built with pooled funds is assigned to the power supply network for management, the electricity is distributed on the basis of the actual amount of the electricity produced in the first year. In the second year, the electricity produced by a thermal power plant or array of generators is to be distributed on the basis of the average hours of utilization of thermal electric power in the network. Methods of distributing hydroelectric power will be decided separately. The electricity produced by those managed by the contributors independently should be distributed in accordance with the actual amount of power output.

5) Two methods are used to solve the problems related to the supplies of sets of equipment, fuel and the three materials needed for the establishment and operation of the power plants built with pooled funds: The first is that the state arranges the supply of full sets of equipment and supplies the fuel at negotiated prices (included in the state transport plans), but the three materials have to be purchased in the market. The second is to import the equipment and materials and to purchase fuel at negotiated prices for power production (included in the state transport plans). No matter which method is adopted, costs should be calculated on the basis of the amount of the investment and charges allowed to float according to changes in the costs.

6) Whenever areas or power plants are not able to fully utilize power production capacities because of insufficiencies in power substations or power transmission lines, funds can be raised to build substations or lines to fully realize capacities. The units that have contributed funds can decide on concrete methods through consultation with the power supply network and by referring to the method for pooling funds to build or expand power stations.

B) Raising funds by selling the right to use electric power

1) Power supply networks can allocate 10 percent of the newly added power production capacity of the year in the state's newly built power plants and use it as a source for raising funds by selling the right to use electric power.

2) The units that have contributed funds can begin using the electricity the year following the year of payment of funds, or in the year when the arrays of generators go into operation. Charges for electricity should be at the current price level prescribed by the state. The right to use electricity should remain unchanged for 20 years.

3) Power supply networks should fix the prices for the sale of electricity utilization quotas to the units contributing funds based on the actual overall costs for the construction of each kilowatt of generating capacity. Quotas are to be offered for sale until they are filled once every year. The sale is uniformly handled by the provincial, regional or municipal department of

electric power industry together with the economic committee. Priority should be given to selling quotas to key enterprises and the enterprises that produce marketable products of high quality and have satisfactory economic results.

4) We should give priority to selling utilization quotas to units that contribute the funds in foreign exchange and encourage the units to contribute equipment and materials and goods in lieu of Renminbi.

5) The investment in the building of power generating projects with pooled funds should be included in the unified state construction plan.

2. On methods of allowing a variety of charges on the supply of part of the electric power

1) The cost of the power that is generated by using the fuel that the state distributes at a higher price can take into account the increase in fuel costs caused by the higher price. The price of the power can be raised accordingly. This should be carried out after obtaining approval from the Ministry of Water Resources and Electric Power and the State Administration of Commodity Prices.

2) Allow power supply networks to organize supplies of fuel at negotiated prices on their own to generate more electricity. A fuel surcharge can be imposed on this additional power output.

3) Power supply networks are permitted to organize their customers to supply fuel for the production of electricity for the customers themselves and make arrangements to produce more electricity in their power plants. The networks are to impose uniform, rational processing charges on the electricity.

4) To fully utilize the generating capacity in bottom hours and control the load in peak hours, power supply networks can charge different prices for electricity supplied at different hours for the customers able to readjust their schedules to use electricity. The electricity supplied in bottom hours can be charged at a price 30 to 50 percent lower than the current one, while that supplied in peak hours can be charged at a price 30 or 50 percent higher than the current one. Power supply networks should also impose different internal prices for electricity supplied at different hours in the power supplying and consuming units under their jurisdiction. The definition of the peak and bottom hours and the prices for these hours should be suggested by the networks according to the reality and then be reported to the Ministry of Water Resources and Electric Power for examination and approval.

5) A power supply network that supplies a relatively large percentage of hydroelectric power should adopt the method of charging different prices for power supplied when there is too much water and for that supplied when there is a shortage of water. The price in the former period can be 30 to 50 percent lower than the current one; while that in the latter period can be 30 to 50 percent higher than the current one. The definition for the periods and the actual prices should be suggested by the bureau of the network according

to actual conditions and then reported to the Ministry of Water Resources and Electric Power for approval.

6) All the electricity that is generated by a power generating enterprise with joint Chinese and foreign capital or by a power generating enterprise that utilizes foreign capital is allowed to be regulated by market mechanisms during the time when the enterprise is repaying the principal and interest on the capital. Electricity prices can be calculated by adding the costs, tax payments and rational profits and be imposed after obtaining approval jointly from the Ministry of Water Resources and Electric Power and the provincial administration of commodity prices.

7) To ensure normal and secure supplies of electricity for the vast number of customers, strictly implement the principle of planned supply and consumption of electricity and should adopt economic sanctions on units that do not supply or consume electricity in accordance with state plans. The amount consumed in excess of the quota should be deducted from future quota, if it is impossible to make this deduction, the extra-quota electricity consumption should be charged at 5 or 10 times more than the current price. The income from this additional charge after the payment of product and income taxes in accordance with the taxation law should be retained by the enterprise for purposes including the strengthening scientific management to improve the conditions of power supply and sharpen the calculation of its power supply and be used specifically for these purposes alone.

3. Some policies

1) The policy of "those who invest shall enjoy the right to use electricity and reap benefit" is implemented for the power plants built with pooled funds. Investment units are also allowed to build and manage the power plants on their own and use the electricity themselves. Under the condition of voluntary participation, they can also assign the management of their power plants to power supply networks.

2) An independently managed power plant built with pooled funds is allowed to sell its electricity at floating prices if it uses the fuel, materials, goods or equipment that have been supplied to it at negotiated prices or if it has utilized foreign funds.

3) For a power supply department that purchases the electricity generated by a power plant that has been built with pooled funds and then sells the electricity as the agent of the plant, the sale price should be determined by adding power supply cost, loss on the transmission line, tax payment and handling charges to the purchase prices.

4) The profit of a power plant that has been built with pooled funds should be shared according to the proportion of 70 percent for the power plant and 30 percent for the power supply department.

5) The power plant that has been built with pooled funds and the power supply department pay taxes separately.

6) Establish a scientific system for pricing electricity and allow a variety of charges for some electricity.

These regulations are to be implemented beginning from the day they are promulgated. The measures that some power industry departments have already adopted before the promulgation and that conform to the principles stipulated in these regulations should be acknowledged as valid. The various power supply network bureaus and the provincial departments of power industry can formulate detailed rules for the implementation of these regulations and then report to the Ministry of Water Resources and Electric Power for approval and implementation.

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CSO: 4005/233

STATE COUNCIL PROVISIONAL REGULATIONS ON THE EXAMINATION AND APPROVAL JURISDICTION REGARDING THE LAUNCHING OF NON-GOVERNMENT-OPERATED AIR TRANSPORT ENTERPRISES, 28 MAY 85

(Guofa [0948 4099] 1985 No 74)

Beijing STATE COUNCIL BULLETIN in Chinese No 17, 30 Jun 85 pp 537-539

[Text] Article 1. To give play to initiative of all sectors, support and guide localities and departments in establishing air transport enterprises and thus develop civil air transport industry to meet the demands of socialist modernization, and to ensure the safety of flights and transport, we hereby specially formulate these regulations:

Article 2. All enterprises using civil aviation equipment to conduct passenger, luggage, cargo or postal transport (hereinafter shortened as air transport enterprises) must observe these regulations.

Article 3. All air transport enterprises must operate as independent accounting units and shoulder sole responsibility for their profits and losses.

Article 4. An application for the establishment of an air transport enterprise should be examined and approved through the following procedures:

1) An application for the establishment of an enterprise that conducts international airline business should be examined by the Chinese Civil Aviation Administration (hereinafter shortened as Civil Aviation Administration) and reported to the State Council for approval.

2) An application for the establishment of an enterprise that conducts interprovincial airline business should be examined and approved by the Civil Aviation Administration.

3) An application for the establishment of an enterprise that conducts airline business inside a province, autonomous region or municipality directly under control of the central government should be approved by the people's government at the provincial level concerned and be reported to the Civil Aviation Administration for the records.

After receiving an application, the organs of examination and approval mentioned above should make a decision within three months.

Article 5. The following conditions must be met for the establishment of an air transport enterprise:

1) It must have the flying and aviation equipment maintenance personnel suited for the business it conducts who have been issued licences by the Civil Aviation Administration, and it must also have the necessary administrative and management personnel;

2) It must have the aviation equipment suited to the business it conducts which has been registered with and been issued an airworthiness document by the Civil Aviation Administration;

3) It must have the necessary funds for its operation;

4) The airport that it uses must be able to ensure the safety of its operation; and

5) The facilities for the maintenance of its aviation equipment must be able to ensure the airworthiness of the equipment.

Article 6. An application for the establishment of an air transport enterprise should contain the following:

1) certificates mentioned in the preceding article on conditions for establishment;

2) the name, code, marks and insignias, location of main offices, and the air routes, projects and business scope; and

3) an analysis of its economic results.

Article 7. After undergoing examination, approval, and being put on file as stipulated in Article 4, the air transport enterprise established should be issued a business permit by the Civil Aviation Administration. The air transport enterprise should bring this permit to register its business and obtain a business license in accordance with the stipulation of the "Regulations on the Register and Control of Industrial and Commercial Enterprises" (published in 1982 issue No 13 of this Bulletin) and then begin its operation of transport business.

When an air transport enterprise needs to change items registered on its business permit, it should submit an application to the Civil Aviation Administration for approval and then go through necessary procedures according to stipulations of the "Regulations on the Register and Control of Industrial and Commercial Enterprises."

Article 8. An air transport enterprise should purchase from the People's Insurance Company of China insurance for the responsibility of carrier of passenger and cargo transport and third party insurance.

Article 9. Negotiations with foreign parties by air transport enterprises that conduct international airline business are handled by the Civil Aviation Administration in a unified manner.

Article 10. An air transport enterprise should observe state law and administrative decrees and regulations and accept supervision and examination by relevant departments. If it conducts international airline business, it should moreover observe air transport agreements that our country has signed with countries concerned (including agreements on transits) and international conventions that our country has participated in.

Article 11. An air transport enterprise should observe relevant regulations and orders on civil aviation and obey navigation commands of the relevant flight control departments and control towers in our airports.

Flight security departments and airports under the Civil Aviation Administration should provide air transport enterprises with the telecommunications, flight guidance, weather information and related services to ensure normal flights.

Article 12. An air transport enterprise has decisionmaking power over its operation. It should do a good job of its administration and management and conduct reasonable competition under the guidance of medium- and long-term civil aviation plans formulated by the Civil Aviation Administration.

An air transport enterprise should submit statistical statements on its aviation business to the Civil Aviation Administration and accept the Administration's instructions to coordinate and supervise its economic activities.

Article 13. An air transport enterprise should obey the Civil Aviation Administration's supervision over the airworthiness of the aviation equipment and the Administration's investigation and handling of aviation accidents.

If an air transport enterprise has violated the law or regulations, the Civil Aviation Administration can punish it by giving it a warning, fining it, suspending its operation, or revoking its business permit. In serious cases, the organs of law administration will affix responsibilities in accordance with the law.

For an air transport enterprise whose business permit has been revoked, the Civil Aviation Administration should consult with the industrial and commercial administration department to revoke its business license in accordance with regulations.

Article 14. An air transport enterprise can hire and charter aviation equipment of a non-aviation enterprise in accordance with the following rules:

1) There must be corresponding markings of the air transport enterprise; and

2) The certificates and standards of the airworthiness of the aviation equipment and the certificates and technical standards of the flying and maintenance personnel should meet state regulations.

Article 15. The Civil Aviation Administration is responsible for the interpretation of these regulations.

Article 16. These regulations go into force after they are promulgated. Air transport enterprises established before the promulgation of these regulations should again apply, obtain approval and be put on file within 6 months. Any of these enterprises which fail to do so within the 6 months wil not be allowed to continue its air transport business, and industrial and commercial administration department concerned will revoke its business license.

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AGREEMENT BETWEEN PRC AND KINGDOM OF BELGIUM ON DOUBLE TAXATION AND AVOIDANCE OF TAX EVASION 18 APRIL 85

Agreement Signed

Beijing STATE COUNCIL BULLETIN in Chinese No 17, 30 Jun 85 pp 539-556

[Protocol to the Agreement Between PRC and Kingdom of Belgium on Double Taxation and Avoidance of Tax Evasion, 18 April 1985]

[Text] The governments of the PRC and the Kingdom of Belgium, desiring to conclude an agreement for the avoidance of double taxation and the prevention of tax evasion, have agreed as follows:

Article 1: The Scope of Persons

This Agreement shall apply to persons who are residents of one or both of the Contracting States.

Article 2: The Scope of Taxes

1. This Agreement shall apply to all taxes levied by a Contracting State or its local authorities, irrespective of the manner in which such taxes are levied.

2. Taxes on all or a particular item of income, including taxes on income from the transfer of movable and immovable properties and taxes levied on increases in the value of capital, shall be treated as income tax.

3. The taxes to which this Agreement shall apply are:

A) In Belgium:

i) The natural person tax;

ii) The corporation tax;

iii) The juridical person tax;

iv) The non-resident tax;

v) Special donations that are treated as the natural person tax;

Including tax withholdings, surcharges on the above taxes and withholdings and surcharges on the natural person tax.

(Hereinafter referred to as "Belgian tax")

B) In the People's Republic of China:

i) The individual income tax;

ii) The income tax concerning joint ventures using Chinese and foreign investment;

iii) The income tax concerning foreign enterprises;

iv) The local income tax;

Including source withholdings and advance withholdings on the above-mentioned taxes.

(Hereinafter referred to as "Chinese tax")

4. This Agreement shall also apply to any identical or substantially similar taxes which are imposed after the date of signature of this Agreement in addition, or in place of, existing taxes. The competent authorities of the Contracting States shall notify each other of any substntial changes which have been made in their respective taxation laws within a reasonable period of time after such changes.

Article 3: General Definitions

1. For the purpose of this Agreement, unless the context otherwise requires:

i) the term "Belgium" refers to the Kingdom of Belgium and, when used as a geographical concept, refers to the territory of the Kingdom of Belgium, including its territorial waters and areas which, according to the international law, Belgium has sovereign rights to explore and exploit the natural resources in the sea bottom, sea bed and waters above the sea bottom.

ii) The term "China" refers to the PRC, and, when used in a geographical sense, refers to all PRC territories, including territorial waters on which Chinese tax laws are effectively enforced, as well as regions beyond its territorial waters which, according to international law, the PRC has sovereign rights to explore and exploit the resources in the sea bottom, sea bed and waters above the sea bottom.

iii) The terms "a Contracting State" and "the other Contracting State" mean Belgium or the PRC, as the context requires;

iv) The term "tax" means Belgian tax or Chinese tax, as the context requires.

v) The term "person" includes a natural person, a company or any other body of persons.

vi) The term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes.

vii) The terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean, respectively, an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State.

viii) The term "nationals" means:

(a) All natural persons possessing the nationality of either Contracting State; and

(b) All juridical persons, partnership companies and bodies created under the present laws of a Contracting State.

ix) The term "international traffic" means any transport by a ship or aircraft operated by an enterprise of a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State.

x) The term "competent authority" means:

(a) In the case of Belgium, the Minister of Finance and his authorized representative; and

(b) In the case of China, the Minister of Finance and his authorized representative.

2) As regards the application of this Agreement by a Contracting State, any term not defined in this Agreement shall, unless the context otherwise requires, have the meaning which it has under the laws of that Contracting State concerning the taxes to which this Agreement applies.

Article 4: Residents

1. For the purpose of this Agreement, the term "residents of a Contracting State" means any person who, under the laws of that Contracting State, is liable to tax therein by reasons of his domicile, residence, place of head office or any other criterion of a similar nature.

2. Where by reason of the provisions of paragraph 1 a natural person is a resident of both Contracting States, then the competent authorities of the Contracting States shall determine by mutual agreement the Contracting State of which that natural person shall be deemed to be a resident for the purposes of this Agreement.

3. Where by reason of the provisions of paragraph 1 a person other than a natural person is a resident of both Contracting States, then it shall be

deemed to be a resident of the Contracting State in which its head or main office is situated.

Article 5: Permanent Establishment

1. For the purposes of this Agreement, the term "permanent establishment" means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

2. The term "permanent establishment" refers especially:

i) A place of management;

ii) A branch;

iii) An office;

iv) A factory;

v) A workshop; and

vi) A mine, an oil or gas well, a quarry or any other place of extraction of natural resources.

3. The term "permanent establishment" also includes:

i) A construction or assembly site or supervisory activities in connection therewith--provided that these continue for a period of more than six months.

ii) Labor services, including consultancy services, furnished by an enterprise through employees or other personnel employed for the above purposes --provided that such activities (for the same project or connected projects) continue on the territory of that country for a period or periods aggregating more than six months within any 12-month period.

4. Notwithstanding the provisions of the above paragraphs, the term "permanent establishment" shall be deemed not to include:

i) The use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;

ii) The maintenance of an inventory of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;

iii) The maintenance of an inventory of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;

iv) The maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or of collecting information, for the enterprise;

v) The maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;

vi) The maintenance of a fixed place of business solely for the purpose of combining the activities referred to in subparagraphs (i) to (v)--provided that such combination shall turn all the activities of that fixed place of business into a preparatory or auxiliary character.

5. Notwithstanding the provisions of paragraphs of 1 and 2, where a person --other than an agent of an independent status to whom the provisions of paragraph 6 apply--is acting in a Contracting State on behalf of an enterprise of the other Contracting State, and has, and habitually exercises in the first-mentioned Contracting State, an authority to conclude contracts in the name of the enterprise, that enterprise shall be deemed to have a permanent establishment in the first-mentioned Contracting State in respect of any activities which that person undertakes for the enterprise, unless his activities exercised through a fixed place of business are limited to those mentioned in paragraph 4 which, under the provisions of that paragraph, would not make this fixed place of business a permanent establishment.

6. An enterprise of a Contracting State shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on business in that other Contracting State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business. Such an agent shall not be deemed to be an agent of an independent status to whom the provisions of this paragraph apply if all or virtually all of his activities are carried out for that enterprise.

7. The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other Contracting State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

Article 6: Immovable Property

1. Income derived by a resident of a Contracting State from immovable property situated in the other Contracting State may be taxed in the other Contracting State.

2. The term "imovable property" shall have the meaning which it has under the laws of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and foresty, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, water sources and other natural resources; ships and aircraft shall not be regarded as immovable property.

3. The provisions of paragraph 1 shall apply to income derived from the direct use, letting, or use in any other form of immovable property.

4. The provisions of paragraphs 1 and 3 shall also apply to the income from immovable property of an enterprise and to income from immovable property used for the performance of independent personal services.

Article 7: Business Profits

1. The profits of an enterprise of a Contracting State shall be taxable only in that Contracting State unless the enterprise carries on business in the other Contracting State through a permanent establishment situation therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in that other Contracting State but only so much as is attributable to that permanent establishment.

2. Subject to the provisions of paragraph 3, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.

3. In determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the permanent establishment, including executive and general administrative expenses so incurred, whether in the Contracting State in which the permanent establishment is situated or otherwise. No deduction shall be allowed in respect of amounts paid (other than reimbursement of actual expenses) by that permanent establishment to the head office of the enterprise or any other offices thereof by way of royalties, remuneration and other similar payments, commission for specific services performed or for management, and interest on loans, except where the enterprise is a banking institution. Likewise, in determining the profits of a permanent establishment, royalties, remuneration and other similar payments, and commission for specific services performed and for management, obtained by the permanent establishment from the head office of the enterprise or any other offices thereof, as well as interest on money lent to the head office of the enterprise or any other offices thereof, shall not be taken into account, except where the enterprise is a banking institution.

4. Insofar as it has been customary in a Contracting State to determine the profits to be attributed to a permanent establishment on the basis of an apportionment of the total profits of the enterprise to its various parts, nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary; the method of apportionment adopted shall, however, be such that the result shall be in accordance with the principles contained in this Article.

5. No profits shall be attributed to a permanent establishment by reason of the mere purchase of that permanent establishment of goods or merchandise for the enterprise.

6. For the purposes of the foregoing paragraphs, the profits to be attributed to the permanent establishment shall be determined by the same method each year unless there is good and sufficient reason to the contrary.

7. Where profits include items of income which are dealt with separately in other Articles of this Agreement, the provisions of those Articles shall not be affected by the provisions of this Article.

Article 8: Maritime and Air Transport

1. Profits from the operation of ships or aircraft in international traffic shall be taxable only in the Contracting State in which the head office of the enterprise is situated.

2. The provisions of paragraph 1 shall also apply to profits from participation in a collective, a joint business or an international operation.

Article 9: Associated Enterprises

Where

(i) An enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State, or

(ii) The same persons participate directly or indirectly in the management, control or capital of an enterprise of the other Contracting State.

And in either case conditions between the two enterprises in their commercial or financial relations are mutually agreed upon or imposed by one party, which differ from those which would be made between independent enterprises, then any profits which would (but for these conditions), have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

Article 10: Dividends

1. Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other Contracting State.

2. Such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident, and according to the laws of that Contracting State; but, if the recipient is the beneficial owner of the dividends, the tax so charged shall not exceed 10 percent of the gross amount of the dividends.

The provisions of this paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

3. The term "dividends" as used in this Article means income from shares or other rights, not being debt-claims, participating in profits, as well as other income which is subjected to the same taxation treatment as income from shares by the taxation laws of the Contracting State of which the company making the distribution is a resident.

4. The provisions of paragraph 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs in that other Contracting State independent personal services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment of fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

5. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other Contracting State may not impose any tax on the dividends paid by the company, except insofar as such dividends paid to a resident of that other Contracting State or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or a fixed base situated in that other Contracting State, nor subject the company's undistributed profits to a tax on the company's undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in that other Contracting State.

Article 11: Interest

1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other Contracting State.

However, such interest may also be taxed in the Contracting State in which it arises, and according to the laws of that Contracting State; but, if the beneficial owner of the interest is a resident of the other Contracting State, the tax so charged shall not exceed 10 percent of the gross amount of the interest.

3. Notwithstanding the provisions of paragraphs 1 and 2, interest arising in a Contracting State shall be exempt from tax in the Contracting State in question if the interest is paid to the other Contracting State or to a bank or credit institution wholly owned by the other Contracting State or mutually recognized by the competent authorities of both Contracting States through agreement.

4. The term "interest" as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and in particular,

income from Government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures.

5. The provisions of paragraphs 1, 2 and 3 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises, through a permanent establishment situated therein, or performs in that other Contracting State independent personal services from a fixed base situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

6. Interest shall be deemed to arise in a Contracting State when the debtor is a Contracting State, an administrative region or local authority thereof or a resident of that Contracting State. Where the debtor, whether a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment or fixed base, then such interest shall be deemed to arise in the Contracting State in which the permanent establishment or fixed base is situated.

7. Where, by reason of a special relationship between the debtor and the beneficial owner or between both of them and some other person, the amount of interest, having regard to the debt-claim for which it is paid, exceeds the amount which would have been agreed upon by the debtor and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.

Article 12: Royalties

1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in the other Contracting State.

2. Such royalties may also be taxed in the Contracting State in which they arise, and according to the laws of that Contracting State; but, if the recipient is the beneficial owner of the royalties, the tax so charged shall not exceed 10 percent of the gross amount of the royalties.

3. The term "royalties" as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work, including cinematograph films and films or tapes for radio or television broadcasting, any patent, trade mark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific experience.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise, through a permanent establishment situated therein, or performs in that other Contracting State independent personal services from a fixed base situated therein, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

5. Royalties shall be deemed to occur in a Contracting State when the debtor is a Contracting State, an administrative region or local authority thereof or a resident of that Contracting State. Where, however, the debtor of the royalties, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the liability to pay the royalties was incurred, and such royalties are borne by such permanent establishment or fixed base, then such royalties shall be deemed to occur in the Contracting State in which the permanent establishment or fixed base is situated.

6. Where, by reason of a special relationship between the debtor and the beneficial owner or between them and some other person, the amount of the royalties, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the debtor and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the royalties shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.

Article 13: Gains from Property

1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 and situated in the other Contracting State may be taxed in that other Contracting State.

2. Gains from the alienation of movable property that forms part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State, or gains from movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or together with the whole enterprise) or of such a fixed base, may be taxes in the other Contracting State.

3. Gains from the alienation of ships or aircraft operated in international traffic and movable property pertaining to the operation of such ships or aircraft shall be taxable only in the Contracting State in which the head office of the enterprise is situated.

4. Gains derived by a company from the alienation of its share holdings may, if the main part of its property is made up, either directly or indirectly, of immovable property situated in a Contracting State, be taxed in that Contracting State.

5. Gains derived from the alienation of shares other than those mentioned in paragraph 4 may, if the shares amount to 25 percent of the share holdings of a company which is resident of a Contracting State, be taxed in that Contracting State.

6. Gains derived from the alienation of any property other than that referred to in paragraphs 1, 2, 3, and 4 and 5 may be taxed in the Contracting State in which the property being alienated is situated.

Article 14: Independent Personal Services

1. Income derived by a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that Contracting State. Income may be taxed in the other Contracting State in either one of the following cases:

i) That resident has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities, in which case the other Contracting State may only levy tax on income attributable to that fixed base;

ii) He is present in the other Contracting State for a period or periods equivalent to or exceeding an aggregate of 183 days in the calendar year concerned, in which case the other Contracting State may only levy tax on income derived from activities exercised therein.

2. The term "professional services" includes, specifically, independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, lawyers, engineers, architects, dentists and accountants.

Article 15: Non-independent Personal Services

1. Subject to the provisions of Articles 16, 18, 19 and 20, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that Contracting State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in the other Contracting State.

2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned Contracting State, if:

i) The recipient is present in the other Contracting State for a period or periods not exceeding an aggregate of 183 days in the calendar year concerned;

ii) The remuneration is paid by, or on behalf of, an employer who is not a resident of the other Contracting State; and

iii) The remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other Contracting State.

3. Notwithstanding the above-mentioned provisions of this Article, remuneration in respect of an employment exercised aboard a ship or aircraft operated in international traffic may be taxed in the Contracting State in which the head office of the enterprise is situated.

Article 16: Directors' Fees

Directors' fees, conference allowances and other similar payments derived by a resident of a Contracting State in his capacity as a member of the board of directors or supervisory committee of a share-holding company or similar institution, which is a resident of the other Contracting State, may be taxed in the other Contracting State.

The provisions of this Article shall also apply to remuneration in respect of duties of a similar nature to those referred to above.

Article 17: Artists and Athletes

1. Notwithstanding the provisions of Articles 14 and 15, income derived by a resident of a Contracting State as an entertainer such as a theater, motion picture, radio or television artist, a musician, or an athlete, from personal activities as such performed in the other Contracting State, may be taxed in the other Contracting State.

2. Where income in respect of personal activities exercised by an entertainer or an athlete in a capacity as such accrues not to the entertainer or athlete personally, but to another person, that income may, notwithstanding the provisions of Articles 7, 14 and 15, be taxed in the Contracting State in which that entertainer or athlete performs activities.

3. Notwithstanding the provisions of paragraphs 1 and 2, income derived by an entertainer or athlete who is a resident of a Contracting State from activities performed pursuant to cultural exchange programs agreed upon by the governments of the Contracting States shall be exempt from tax in the other Contracting State.

Article 18: Pensions

1. Subject to the provisions of paragraph 2 of Article 19, pensions and other similar remuneration paid to a resident of a Contracting State in consideration of past employment shall be taxable only in that Contracting State.

2. Notwithstanding the provisions of pragraph 1, pensions and other payments paid by a Contracting State, an administrative region or local authority thereof, or a juridical person that belongs to the social security system of that Contracting State, shall be taxable only in that Contracting State.

Article 19: Government Duties

1. (i) Remuneration, other than pensions, paid by a Contracting State, or an administrative region or local authority thereof, to a natural person in respect of services rendered to that Contracting State, or an administrative region or local authority thereof, shall be taxable only in that Contracting State.

(ii) However, such remuneration shall be taxable only in the other Contracting State if the services are rendered in the other Contracting State and the natural person is a resident of the other Contracting State who:

a) is a national of the other Contracting State; or

b) did not become a resident of the other Contracting State solely for the purpose of rendering the services.

2. (i) Any pension paid by, or out of funds to which contributions are made by, a Contracting State or an administrative region or local authority thereof to a natural person in respect of services rendered to that Contracting State, or an administrative region or local authority thereof, shall be taxable only in that Contracting State.

(ii) Such pension shall be taxable only in the other Contracting State if the natural person rendering the services is a resident of, and a national of, that Contracting State.

3. The provisions of Articles 15, 16 and 18 shall apply to remuneration and persons in respect of services rendered in connection with a business carried on by a Contracting State or an administrative region or local authority thereof.

Article 20: Teachers

A natural person who is, or immediately before visiting a Contracting State was, a resident of the other Contracting State and is present in a Contracting State solely for the purpose of teaching, giving lectures or conducting research at a university or other accredited educational or research institution in a Contracting State, shall be exempt from tax in a Contracting State, for periods not exceeding three years in the aggregate from the date of his arrival in a Contracting State, in respect of remuneration for such teaching, lectures or research.

Article 21: University Students

Payments received for the purpose of sustenance, education or training by a university student or trainee who is present in a Contracting State solely for the purpose of education or training and who is, or immediately before being so present was, a resident of the other Contracting State, shall be exempt from tax of a Contracting State.

Article 22: Other Income

1. Items of income of a resident of a Contracting State not dealt with in the foregoing Articles of this Agreement and arising in the other Contracting State may be taxed in the other Contracting State.

2. Items of income derived by a resident of a Contracting State in places other than in the other Contracting State shall be taxable only in a Contracting State.

3. The provisions of paragraphs 1 and 2 shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6, if the recipient of such income who is a resident of a Contracting State, carried on business in the other Contracting State through a permanent establishment situated therein, or performs in the other Contracting State independent personal services from a fixed base situated therein, and the right or property in respect of which the income is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, shall apply as the case may be.

Article 23: Methods of Eliminating Double Taxation

1. In Belgium, double taxation shall be eliminated as follows:

i) Except for income referred to in paragraph 2 of Article 10, paragraphs 2 and 7 of Article 11 and paragraphs 2 and 6 of Article 12, income which is derived by a resident of Belgium and which is taxable in China in accordance with the provisions of an agreement shall be exempt from tax in Belgium. In calculating the amount of tax to be paid on the remainder of income by that resident, tax rates applicable to the income in question before the tax exemption may be applied.

ii) Where the income derived by a resident of Belgium, including items of total income that are taxable in Belgium, is a dividend which is taxable in accordance with the provisions of paragraph 2 of Article 10 and which is not exempt from Belgian tax under the following subparagraph (iii), interest which is taxable in accordance with paragraph 2 or 7 of Article 11, or royalties which are taxable in accordance with paragraph 2 or 6 of Article 12, credit shall be allowed when levying tax in respect of that income in Belgium. The credit shall take into account the Chinese tax payable on that income, whether or not the tax has actually been paid. The credit shall be equivalent to the fixed credit allowed for foreign tax as stipulated in Belgian laws, and the tax rate shall not be

less than 15 percent of the income after possible Chinese tax has been deducted. If royalties which are taxable under the general provisions of Chinese laws but are exempted from Chinese tax as a special measure adopted for the purpose of developing the Chinese economy, a 20 percent credit shall be allowed.

iii) Where a company which is a resident of Belgium owns share in a company which is a resident of China, dividends paid by the Chinese company to the Belgian company, which are taxable in China in accordance with paragraph 2 of Article 10, shall be exempt from corporate tax in Belgium, but must meet the tax exemption requirements for cases where both companies are residents of Belgium.

iv) If, when calculating Belgian tax, losses incurred by a permanent establishment set up in China by an enterprise operated by a resident of Belgium have already been deducted from the profits of that enterprise, the tax exemption provided for in subparagraph (i) shall not apply in Belgium to profits attributable to the permanent establishment during other tax payment periods, provided that these profits are also exempt from Chinese tax because they are used to cover the above-mentioned losses.

2. In China, double taxation shall be eliminated as follows:

i) Where a resident of China derives income from Belgium, the amount of Belgian tax payable in respect of that income in accordance with the provisions of this Agreement shall be allowed as a credit against the Chinese tax imposed on that resident. The amount of credit, however, shall not exceed the amount of Chinese tax computed as appropriate to that income in accordance with the taxation laws and regulations of China.

ii) Where the income derived from Belgium is dividend paid by a company which is a resident of Belgium to a company which is a resident of China and which owns not less than 10 percent of the share certificates or share holdings of the company paying the dividend, the Chinese tax credit shall also take into account the Belgian tax payable by the company paying the dividend in respect of profits from dividend.

Article 24: Non-differential Treatment

1. Nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any obligations connected therewith which is other or more burdensome than the taxation and connected obligations to which nationals of that other Contracting State in the same circumstances are or may be subjected. The provisions of this paragraph shall, notwithstanding the provisions of Article 1, also apply to persons who are not residents of one or both of the Contracting States.

2. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be higher than that levied in the other Contracting State on enterprises in the other Contracting State carrying on the same activities. Nothing contained

in this provision shall be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for tax purposes which are available to residents of a Contracting State on the ground of civil status or family burdens.

3. Except where the provisions of Article 9, paragraph 7 of Article 11 or paragraph 6 of Article 12 apply, interest, royalties and other fees paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions if they had been paid to a resident of a Contracting State.

4. Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in a Contracting State to any taxation or any obligations connected therewith which is other or more burdensome than the taxation and connected obligations to which other similar enterprises of a Contracting State are or may be subjected.

5. Notwithstanding the provisions of Article 2, the provisions of this Article apply to all taxes.

Article 25: Procedures for Consultation

1. Where a person considers that the actions of one or both of the Contracting States result or will result in taxation not in accordance with the provisions of this Agreement, the person may, irrespective of the remedies provided by the domestic laws of the Contracting States, present a case to the competent authority of the Contracting State of which the person is a resident or, if the case comes under paragraph 1 of Article 24, to that of the Contracting State of which the person is a national. The case must be presented within 3 years from the first notification of the action resulting in taxation not in accordance with the provisions of this Agreement.

2. The competent authority shall endeavor, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with the provisions of this Agreement.

3. The competent authorities of the Contracting States shall endeavor to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of this Agreement.

4. The competent authorities of the Contracting States shall consult on administrative measures necessary for carrying out the provisions of this Agreement, especially on evidence to be furnished by residents of either Contracting State who wish to enjoy tax exemption or relief provided for by this Agreement.

5. The competent authorities of the Contracting States shall communicate with each other directly.

Article 26: Exchange of Information

1. The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this Agreement, or of the domestic laws of the Contracting States concerning taxes covered by this Agreement (insofar as the taxation thereunder is not contrary to the provisions of this Agreement), particularly for the prevention of tax evasion. The exchange of information is not restricted by Article 1. Any information so exchanged shall be treated in the same manner as confidential information obtained under the domestic laws of the Contracting State and shall be disclosed only to persons or authorities (including courts and administrative departments) involved in the assessment or collection of the taxation covered by this Agreement, in lawsuits or prosecution in connection with such taxes, or in the determination of appeals in relation thereto. The above-mentioned persons or authorities shall use such information solely for the above-mentioned purposes, but may disclose relevant information in proceedings and rulings in open courts.

2. In no case shall the provisions of paragraph 1 be construed so as to impose on a Contracting State the obligation:

i) to carry out administrative measures at variance with the laws and the administrative practice of either Contracting State;

ii) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State; or

iii) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information, the disclosure of which would be a violation of public order.

Article 27: Diplomats

Nothing in this Agreement shall affect the tax privileges of diplomatic corps or consular officers under the general rules of international law or under the provisions of special agreements.

Article 28: Entry into Force

The Contracting States shall give each other written notification, through diplomatic channels, after internal legal procedures necessary for the entry into force of this Agreement have been completed. This Agreement shall enter into force on the thirtieth day after the date on which the last party dispatched the note. This Agreement shall have effect as respects income derived during the years beginning on the first day of January in the calendar year next following that in which this

Agreement enters into force, or income derived during the taxable years beginning on the first day of January in the calendar next following that in which this Agreement enters into force.

Article 29: Termination

This Agreement shall be in effect indefinitely but either of the Contracting States may, before the first day of July in any calendar year after the expiration of a period of 5 years from the date of its entry into force, give to the other Contracting State, through diplomatic channels, written notice of termination of the Agreement at the end of the year. In such event, this Agreement shall cease to have effect in respect to income derived during the years beginning on the first day of January in the calendar year next following that in which the notice of termination is given or income derived during the taxable years beginning on the first day in January in the calendar year next following that in which this Agreement terminates.

IN WITNESS WHEREOF the undersigned, duly authorized thereto by their respective Governments, have signed this Agreement.

Done at Beijing on the eighteenth day of April, 1985, in duplicate in the Chinese, French and Dutch languages, all three texts being equally authentic.

For the Government of the PRC:

Zhao Ziyang (signed)

For the Government of the Kingdom of Belgium:

Wilfried Martens (signed)

Protocol to Agreement

Beijing STATE COUNCIL BULLETIN in Chinese No 17, 30 Jun 85 pp 555-556

[Text] At the signing of the Agreement between the Government of the PRC and the Government of the Kingdom of Belgium on the Avoidance of Double Taxation and Income Tax Evasion, the two sides have agreed upon the following provisions which form an integral part of the Agreement.

1. The term "residents of a Contracting State" referred to in paragraph 1, Article 4, of this Agreement also means companies other than joint stock companies that have, in accordance with Belgian laws, opted for the payment of the natural person tax computed on the basis of profits attributable to their partners.

2. In the application of paragraph 2, Article 4, of this Agreement, the competent authorities of the Contracting States shall consult the provisions of paragraph 2, Article 4, of the United Nations Model Pact on Double Taxation between Developed and Developing Countries.

3. The provisions of Article 8 of this Agreement shall not affect the provisions of Article 8 of the Agreement on Maritime Transport signed at Beijing on 20 April 1974 between the Government of the Kingdom of Belgium and the Government of the PRC. Neither shall they affect the provisions of Article 10 of the Agreement on Civil Air Transport signed at Beijing on 20 April 1975 between the Government of the Kingdom of Belgium and the Government of the PRC.

4. The term "dividend" referred to in Article 10 of this Agreement also means the taxable income derived by the partner of a company which is a resident of a Contracting State from capital investment, including income paid in the form of interest.

5. With reference to paragraph 2 of Article 12 of this Agreement, tax on royalties paid in return for the use of, or the right to use, industrial, commercial or scientific equipment shall be levied on 60 percent of the gross amount of the royalties.

6. Except where other provisions of this Agreement apply, and granting that the provisions of paragraph 2 of Article 24 of this Agreement do not preclude the imposition of tax by a Contracting State on a resident of the other Contracting State, tax shall be levied in accordance with the laws of that Contracting State. The tax rates on the taxable profits of a permanent establishment set up in a Contracting State by a company which is a resident of the other Contracting State shall not exceed the highest tax rate applicable to the profits made by a company which is a resident of a Contracting State.

7. No provision of this Agreement shall impose restrictions on the taxation, in accordance with the laws of a Contracting State, on the retrieval of shares or holdings or the distribution of assets by a company which is a resident of that Contracting State.

IN WITNESS WHEREOF the undersigned, duly authorized by their respective Governments, have signed this Agreement.

Done at Beijing on the 18th day of April, 1985, in duplicate in the Chinese, French and Dutch languages, all three texts being equally authentic.

For the Government of the PRC:

Zhao Ziyang (signed)

For the Government of the Kingdom of Belgium

Wilfried Martens (signed)

/7358
CSO: 4005/233

AGREEMENT BETWEEN PRC AND USA ON DOUBLE TAXATION AND AVOIDANCE OF TAX EVASION, 30 APRIL 85

Agreement Signed

Beijing STATE COUNCIL BULLETIN in Chinese No 17, 30 Jun 85 pp 556-572

[Our government has completed the legal procedures necessary for the entry into force of this Agreement]

[Text] The Government of the PRC and the Government of the United States of America, desiring to conclude an agreement for the avoidance of double taxation and tax evasion, have agreed as follows:

Article 1

This Agreement shall apply to persons who are residents of one or both of the Contracting States.

Article 2

1. The taxes to which this Agreement shall apply are:

(A) In the PRC:

i) The individual income tax;

ii) the income tax concerning joint ventures using Chinese and foreign investment;

iii) the income tax of foreign enterprises; and

iv) the local income tax

(Hereinafter referred to as "Chinese tax").

(B) In the United States of America:

Federal income tax levied in accordance with domestic revenue laws

(Hereinafter referred to as "American tax").

2. This Agreement shall also apply to any identical or substantially similar taxes which are imposed after the date of signature of this Agreement in addition to, or in place of, those referred to in paragraph 1. The competent authorities of the Contracting States shall notify each other of any substantial changes which have been made in their respective taxation laws within a reasonable period of time after such changes.

Article 3

1. For the purpose of this Agreement, unless the context otherwise requires:

i) The term "PRC," when used in a geographical sense, refers to all PRC territories, including territorial waters, on which Chinese taxation laws are effectively enforced, as well as to all regions beyond the territorial waters, including the sea bottom and sea bed which, according to the international law, the PRC has the right of administration and on which Chinese taxation laws are effectively enforced;

ii) the term "the United States of America," when used in a geographical sense, refers to all territories of the United States of America, including territorial waters, on which American taxation laws are effectively enforced, as well as all regions beyond the territorial waters, including the sea bottom and sea bed which, according to the international law, the United States of America has the right of administration and on which American taxation laws are effectively enforced;

iii) the terms "a contracting state" and "the other contracting state" mean the PRC and the United States of America, as the context requires;

iv) the term "tax" means Chinese tax or American tax, as the context requires;

v) the term "person" includes an individual, a company, a partnership enterprise or any other body of persons;

vi) the term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes;

vii) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean, respectively, an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;

viii) the term "nationals" means all individuals possessing the nationality of either Contracting States and all juridical persons, partnership enterprises and bodies so established under the present laws of a Contracting State;

ix) the term "competent authorities" means, in the case of the PRC, the Minister of Finance and his authorized representative and, in the case of the United States of America, the Treasury Secretary and his authorized representative.

2. As regards the application of this Agreement by a Contracting State, any term not defined in this Agreement shall, unless the context otherwise requires, have the meaning which it has under the laws of that Contracting State concerning the taxes to which this Agreement applies.

Article 4

1. For the purposes of this Agreement, the term "residents of a Contracting State" means any person who, under the laws of that Contracting State, is liable to tax therein by reasons of his domicile, residence, place of head office or registration, or any other criterion of a similar nature.

2. Where, by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then the competent authorities of both Contracting States shall determine by mutual consultation the Contracting State of which that individual shall be deemed a resident for the purposes of this Agreement.

3. Where, by reason of the provisions of paragraph 1 a company is a resident of both Contracting States, then the competent authorities of both Contracting States shall determine by mutual consultation the Contracting State of which that company shall be deemed a resident for the purposes of this Agreement. If it cannot be determined through consultation, the company shall not be entitled to the privileges of this Agreement as a resident of either Contracting State.

4. Where, by reason of the provisions of paragraph 1 a company which is a resident of the United States of America is also a resident of a third country by reason of a tax agreement concluded between the PRC and a third country, then that company shall not be entitled to the privileges of this Agreement as a resident of the United States of America.

Article 5

1. For the purposes of this Agreement, the term "permanent establishment" means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

2. The term "permanent establishment" refers especially to:

i) a place of management;

ii) a branch

iii) an office;

iv) a factory;

v) a workshop;

vi) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources.

3. The term "permanent establishment" also includes:

i) A building site, a construction, assembly or installation project or supervisory activities in connection therewith--provided that these continue for a period of more than 6 months.

ii) Equipment, digs or ships used for the prospecting or extraction of natural resources--provided that the duration of use is more than 3 months.

iii) Labor services, including consultancy services, furnished by an enterprise through employees or other personnel for the same project or connected projects in the other Contracting State--provided that such activities continue for a period or periods aggregating more than 6 months within any 12-month period.

4. Notwithstanding the provisions of paragraphs 1 and 2, the term "permanent establishment" shall be deemed not to include:

i) The use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;

ii) the maintenance of an inventory of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;

iii) the maintenance of an inventory of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;

iv) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or of collecting information, for the enterprise;

v) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;

vi) the maintenance of a fixed place of business solely for the purpose of combining the activities referred to in subparagraphs (i) to (v)--provided that such combination shall turn the activities of that place of business into a preparatory or auxiliary character.

5. Notwithstanding the provisions of paragraphs 1 and 2, where a person--other than an agent of an independent status to whom the provision of paragraph 6 apply--is acting in a Contracting State on behalf of an enterprise of the other Contracting State, and has, and habitually exercises in the first-mentioned Contracting State, the authority to conclude contracts in the name of the enterprise, that enterprise shall be deemed to have a permanent establishment in the first-mentioned Contracting State in respect of any activities which that person undertakes for the enterprise, unless his activities exercised through a fixed place of business are limited to those mentioned in paragraph 4 which, under the provisions of that paragraph, would not make his place of business a permanent establishment.

6. An enterprise of a Contracting State shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on business in the other Contracting State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business. Such an agent shall not be deemed to be an agent of an independent status to whom the provisions of this paragraph apply if all or virtually all of his activities are carried out for that enterprise and there are indications that the transactions between that agent and the enterprise are not concluded under normal conditions.

7. The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other Contracting State (whether through a permanent establishment or otherwise, shall not of itself constitute either company a permanent establishment of the other.

Article 6

1. Income derived by a resident of a Contracting State from immovable property situated in the other Contracting State may be taxed in the other Contracting State.

2. The term "immovable property" shall have the meaning which it has under the laws of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, water sources and other natural resources; ships and aircraft shall not be regarded as immovable property.

3. The provisions of paragraph 1 shall apply to income derived from the direct use, letting, or use in any other form of immovable property.

4. The provisions of paragraphs 1 and 3 shall also apply to the income from immovable property of an enterprise and to income from immovable property used for the performance of independence personal services.

Article 7

1. The profits of an enterprise of a Contracting State shall be taxable only in that Contracting State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other Contracting State but only so much as is attributable to that permanent establishment.

2. Subject to the provisions of paragraph 3, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it

might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.

3. In determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the permanent establishment, including executive and general administrative expenses so incurred, whether in the Contracting State in which the permanent establishment is situated or otherwise. No deduction shall be allowed in respect of amounts paid (other than reimbursement of actual expenses) by that permanent establishment to the head office of the enterprise or any other offices thereof by way of royalties or other similar payments, and interest on loans. Likewise, in determining the profits of a permanent establishment, royalties or other similar payments obtained by the permanent establishment from the head office of the enterprise or any other offices thereof, as well as interest on money lent to the head office of the enterprise or any other offices thereof (other than reimbursement of actual expenses), also shall not be taken into account.

4. Insofar as it is the provisions of the taxation laws of a Contracting State to determine, in respect of specific trades, the profits to be attributable to a permanent establishment on the basis of verified profits, nothing in paragraph 2 shall preclude that Contracting State from enforcing its laws, but the result must be in accordance with the principles contained in this article.

5. No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandises for the enterprise.

6. For the purposes of paragraphs 1 to 5, the profits to be attributed to the permanent establishment shall be determined by the same method each year unless there is good and sufficient reason to the contrary.

7. Where profits include items of income which are dealt with separately in other Articles of this Agreement, the provisions of those Articles shall not be affected by the provisions of this Article.

Article 8

1. Where

i) an enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State, or

ii) the same person participates directly or indirectly in the management, control or capital of an enterprise of other Contracting State,

and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accured to one of the enterprises but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

2. Where a Contracting State includes the profits of an enterprise which have already been taxed in the other Contracting State but which should have been accrued to an enterprise of a Contracting State in the profits of an enterprise situated therein and imposes tax accordingly, if the relations between the two enterprises are those between independent enterprises, then the other Contracting State shall readjust the amount of tax on this portion of profits. In determining such readjustments, other provisions of this Agreement shall be duly taken into account and, where necessary, the competent authorities of both Contracting States shall hold consultations.

Article 9

1. Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in the other Contracting State.

2. Such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident, and according to the laws of that Contracting State; but, if the recipient is the beneficial owner of the dividends, the tax so charged shall not exceed 10 percent of the gross amount of the dividends.

The provisions of this paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

3. The term "dividends" as used in this Article means income from shares or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights which is subjected to the same taxation treatment as income from shares by the taxation laws of the Contracting State of which the company making the distribution is a resident.

4. The provisions of paragraph 1 and shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs in the other Contracting State independent personal services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 13 shall apply as the case may be.

5. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, the other Contracting State may not impose any tax on the dividends paid by the company, except

insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or a fixed base situated in the other Contracting State, nor subject the company's undistributed profits to a tax on the company's undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in the other Contracting State.

Article 10

1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in the other Contracting State.

2. Such interest may also be taxed in the Contracting State in which it arises, and according to the laws of that Contracting State; but, if the recipient is the beneficial owner of the interest, the tax so charged shall not exceed 10 percent of the gross amount of the interest.

3. Notwithstanding the provisions of paragraph 2, interest arising in a Contracting State and derived by the Government of the other Contracting State, an administrative region or local authority thereof, the Central Bank or any financial institution wholly owned by that Government, or by any resident of the other Contracting State with respect to debt-claims indirectly financed by the Government of the other Contracting State, an administrative region or local authority thereof, the Central Bank or any financial institution wholly owned by that Government shall be exempt from tax in a Contracting State.

4. The term "interest" as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and in particular, income from Government securities and income from bonds or debentures, including premium and prizes attaching to such securities, bonds or debentures.

5. The provisions of paragraphs 1, 2 and 3 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises, through a permanent establishment situated therein, or performs in the other Contracting State independent personal services from a fixed base situated therein, and the debt-claims in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 13 shall apply as the case may be.

6. Interest shall be deemed to arise in a Contracting State when the debtor is a Contracting State, an administrative region or local authority thereof or a resident of that Contracting State. Where, however, the debtor, whether a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment or fixed base, then such interest shall be deemed to arise in the Contracting State in which the permanent establishment or fixed base is situated.

7. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest, having regard to the debt-claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.

Article 11

1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in the other Contracting State.

2. Such royalties may also be taxed in the Contracting State in which they arise, and according to the laws of that Contracting State; but, if the recipient is the beneficial owner of the royalties, the tax so charged shall not exceed 10 percent of the gross amount of the royalties.

3. The term "royalties" as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work, including cinematograph films and films or tapes for radio or television broadcasting, any patent, trade mark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial commercial or scientific equipment, or information concerning industrial, commercial or scientific experience.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise, through a permanent establishment situated therein, or performs in the other Contracting State independent personal services from a fixed base situated therein, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment or fixed base. In such case, the provisions of Article 7 or Article 13 shall apply as the case may be.

5. (i) Royalties shall be deemed to arise in a Contracting State when the payer is the Government of that Contracting State, an administrative region or local authority thereof or a resident of that Contracting State. Where, however, the person paying the royalties, whether a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the liability to pay the royalties was incurred, and such royalties are borne by such permanent establishment or fixed base, then such royalties shall be deemed to arise in the Contracting State in which the permanent establishment or fixed base is situated.

(ii) Under the provisions of subparagraph (i), if the royalties do not arise in either Contracting State but are connected with the use of, or right to use, the said right or property by either one of the Contracting States, then such royalties shall be deemed to arise in that Contracting State.

6. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being given to the other provisions of this Agreement.

Article 12

1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 and situated in the other Contracting State may be taxed in the other Contracting State.

2. Gains from the alienation of movable property that forms part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State, or gains from movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or together with the whole enterprise) or of such a fixed base, may be taxed in the other Contracting State.

3. Gains derived by a resident of a Contracting State from the alienation of ships or aircraft operated in international traffic and movable property pertaining to the operation of such ships or aircraft shall be taxable only in that Contracting State.

4. Gains derived by a company from the alienation of its share capital may, if the main part of the property is made up, directly or indirectly, of immovable property situated in a Contracting State, be taxed in that Contracting State.

5. Gains derived from the alienation of shares other than those mentioned in paragraph 4 may, if the shares amount to 25 percent of the share holdings of a company which is a resident of a Contracting State, be taxed in that Contracting State.

6. Gains derived by a resident of a Contracting State from the alienation of any property other than that referred to in paragraphs 1 to 5 and arising in the other Contracting State may be taxed in the other Contracting State.

Article 13

1. Income derived by a resident of a Contracting State in respect of professional services or other independent activities shall be taxable only in that Contracting State unless there is a fixed base regularly available to a person in the other Contracting State for the purpose of performing activities or the person is present in the other Contracting State for a period or

periods exceeding in the aggregate 183 days in the calendar year concerned. If a person has such a fixed base or remains in the other Contracting State for the aforesaid period or periods, the income may be taxed in the other Contracting State but only so much as is attributable to that fixed base or is derived in the other Contracting State during the aforesaid period or periods.

2. The term "professional services" includes, specifically, independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, lawyers, engineers, architects, dentists and accountants.

Article 14

1. Subject to the provisions of Articles 15, 17, 18, 19 and 20, salaries, wages and other similar remuneration derived by a resident of a Contracting State through employment shall be taxable only in that Contracting State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefore may be taxed in the other Contracting State.

2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in a Contracting State, if:

i) the recipient is present in the other Contracting State for a period or periods not exceeding in the aggregate 183 days in the calendar year concerned; and

ii) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other Contracting State; and

iii) the remuneration is borne by a permanent establishment or a fixed base which the employer has in the other Contracting State.

Article 15

Directors' fees and other similar payments derived by a resident of a Contracting State in his capacity as a member of the board of directors of a company which is a resident of the other Contracting State may be taxed in the other Contracting State.

Article 16

1. Notwithstanding the provisions of Articles 13 and 14, income derived by a resident of a Contracting State an an entertainer such as a theater, motion picture, radio or television artist, a musician, or an athlete, from personal activities as such performed in the other Contracting State, may be taxed in the other Contracting State.

Such income shall, however, be exempt from tax in the other Contracting State if such activities are performed by a resident of a Contracting State in the capacity as an artist or athlete in pursuant to a special program for cultural exchange agreed upon between the Governments of the Contracting States.

2. Where income in respect of personal activities performed by an entertainer or an athlete in a capacity as such accrues not to the entertainer or athlete personally but to another person, that income may, notwithstanding the provisions of Articles 7, 13 and 14, be taxed in the Contracting State in which that entertainer or athlete performs activities.

Such income shall, however, be exempt from tax in the Contracting State if such activities are exercised in pursuant to a special program for cultural exchange agreed upon between the Governments of the Contracting States.

Article 17

1. Subject to the provisions of paragraph 2 of Article 18, pernsions and other similar remuneration paid to a resident of a Contracting State in consideration of past employment shall be taxable only in that Contracting State.

2. Notwithstanding the provisions of paragraph 1, pensions and other payments paid by the Government of a Contracting State, or an administrative region or local authority thereof, according to the social security system or public welfare program of that Contracting State, shall be taxable only in that Contracting State.

Article 18

1. (i) Remuneration other than pensions, paid by the Government of a Contracting State, or an administrative region or local authority thereof, to an individual for services rendered to that Contracting State, or an administrative region or local authority thereof, shall be taxable only in that Contracting State.

(ii) Such remuneration shall be taxable only in the other Contracting State if the services are rendered in the other Contracting State and the individual is a resident of the other Contracting State who:

a) is a national of the other Contracting State; or

b) did not become a resident of the other Contracting State solely for the purpose of rendering the services.

2. (i) Any pension paid by, or out of funds to which contributions are made by, the Government of a Contracting State, or an administrative region or local authority thereof, to an individual for services rendered to the Government of that Contracting State, or an administrative region or local authority thereof, shall be taxable only in that Contracting State.

(ii) Such pension shall be taxable only in the other Contracting State if the individual is a resident of, and a national of, that Contracting State.

3. The provisions of Articles 14, 15, 16 and 17 shall apply to remuneration and pensions for services rendered in connection with a business carried on by the Government of a Contracting State, or an administrative region or local authority thereof.

Article 19

An individual who is, or immediately before visiting a Contracting State was, a resident of the other Contracting State and is temporarily present in a Contracting State for the primary purpose of teaching, giving lectures or conducting research at a university, college, school or other accredited educational institution in a Contracting State shall be exempt from tax in a Contracting State, for periods not exceeding 3 years in the aggregate, in respect of remuneration for such teaching, lectures or research.

Article 20

The following payments received by a student, business apprentice or trainee who is present in a Contracting State merely for the purpose of education, training or the acquisition of special technical experience and who is, or immediately before being so present was, a resident of the other Contracting State, shall be exempt from tax of a Contracting State:

i) payments received from abroad for the purpose of sustenance, education, study, research or training;

ii) grants or prizes awarded by government, scientific, educational or other tax-exempt bodies; or

iii) income not exceeding 5,000 dollars, or its equivalent in renminbi, in any taxable year, derived from personal services in a Contracting State.

Preferential treatment provided by this Article shall extend only a a reasonable period necessary for completing the education or training.

Article 21

1. Items of income of a resident of a Contracting State not dealt with in the foregoing Articles of this Agreement, regardless of where they arise, shall be taxable only in that Contracting State.

2. The provisions of paragraph 1 shall not apply to income, other than immovable property as defined in paragraph 2 of Article 6, if the recipient of such income who is a resident of a Contracting State, carried on business in the other Contracting State through a permanent establishment situated therein, or performs in the other Contracting State independent personal services from a fixed base situated therein, and the right or property in respect of which the income is paid is effectively connected with such

permanent establishment or fixed base. In such case, the provisions of Article 7 or Article 13 shall apply as the case may be.

3. Notwithstanding the provisions of paragraphs 1 and 2, items of income of a resident of a Contracting State not dealt with in the foregoing Articles of this Article may be taxed in the other Contracting State if such income arise in the other Contracting State.

Article 22

1. In China, double taxation shall be eliminated as follows:

i) Where a resident of China derives income from the United States, the amount of American tax payable on that income in accordance with the provisions of this Agreement shall be allowed as a credit against the Chinese tax imposed on that resident. The amount of credit, however, shall not exceed the amount of the Chinese tax computed as appropriate to that income in accordance with the taxation laws and regulations of China.

ii) Where the income derived from the United States is a dividend paid by a company which is a resident of the United States to a company which is a resident of China and which owns not less than 10 percent of the shares of the company paying the dividend, the credit shall take into account the American tax payable by the company paying the dividend in respect of its income.

2. In the United States of America, American residents or citizens shall, in accordance with American taxation laws, be allowed credits against the following in the American tax payable on their income:

i) Income tax paid by or on behalf of that resident or citizen;

ii) Where an American company owns not less than 10 percent of the voting shares of a company which is a resident of China and that American company receives a dividend from that company, the income tax paid by or on behalf of the company distributing the dividend in respect of the profits out of which the dividend is paid.

Taxes referred to in subparagraph (i) of paragraph 1 and in paragraph 2 of Article 2 of this Agreement shall be deemed income tax discussed in this paragraph.

3. Income derived by a resident of a Contracting State shall be deemed to arise in the other Contracting State if such income may be taxed in the other Contracting State.

Article 23

1. Nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements

to which nationals of the other Contracting State in the same circumstances are or may be subjected. The provisions of this paragraph shall, notwithstanding the provisions of Article 1, also apply to persons who are residents of one or both of the Contracting States.

2. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favorably levied in the other Contracting State than the taxation levied on enterprises of that Contracting State carrying on the same activities. Nothing contained in this provision shall be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for tax purposes which are available to residents of a Contracting State on the ground of civil status or family burdens.

3. Except where the provisions of Article 8, paragraph 7 of Article 10 or paragraph 6 of Article 11 apply, interest, royalties and other fees paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions if they had been paid to a resident of a Contracting State.

4. In a Contracting State, enterprise capital which is wholly or partly owned or controlled, directly or indirectly, by one of more residents of the other Contracting State, shall not be subjected in a Contracting State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of a Contracting State are or may be subjected.

Article 24

1. Where a person considers that the actions of one or both of the Contracting States result or will result in taxation not in accordance with the provisions of this Agreement, the person may, irrespective of the remedies provided by the domestic laws of those Contracting States, present a case to the component authority of the Contracting State of which the person is a resident or, if the case comes under paragraph 1 of Article 23, to that of the Contracting State of which the person is a national. The case must be presented within 3 years from the first notification of the action resulting in taxation not in accordance with the provisions of this Agreement. Any agreement reached shall be implemented not withstanding any time limits in the domestic laws of the Contracting States.

3. The competent authorities of the Contracting States shall endeavor to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of this Agreement.

4. The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an agreement in the sense of paragraphs 2 and 3. When it seems advisable for the purpose of reaching agreement, the component authorities may meet together for an oral exchange of opinions.

Article 25

1. The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this Agreement, or of the domestic laws of the Contracting States concerning taxes covered by this Agreement (insofar as the taxation thereunder is not contrary to the provisions of this Agreement), particularly for the prevention of tax evasion. The exchange of information is not restricted by Article 1. Any information so exchanged shall be treated as secret and shall be disclosed only to persons or authorities (including courts and administrative departments) involved in the assessment, collection, management, enforcement of the taxation covered by this Agreement or in the prosecution and determination of appeals in relation thereto. The above-mentioned persons or authorities shall use such information solely for the above-mentioned purposes, but may quote relevant information in the proceedings and rulings in open courts.

2. In no case shall the provisions of paragraph 1 be construed so as to impose on a Contracting State the obligations:

i) to carry out administrative measures at variance with the laws and the administrative practice of that or of the other Contracting State;

ii) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State; or

iii) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information, the disclosure of which would be contrary to public policy.

Article 26

Nothing in this Agreement shall affect the fiscal privileges of diplomatic agents or consular officers under the general rules of international law or under the provisions of special agreements.

Article 27

The Contracting States shall give each other written notification, through the diplomatic channel, after internal legal procedures necessary for the entry into force of this Agreement have been completed. This Agreement shall enter into force on the thirtieth day after the date on which the last party dispatched the note and shall have effect as respects income derived during the taxable years beginning on or after the first day of January in the following calendar year.

Article 28

This Agreement shall continue in effect indefinitely but either of the Contracting States may, before the thirtieth day of June in any calendar year beginning after the expiration of a period of 5 years from the date of its entry into force, give to the other Contracting State, through diplomatic channels, written notice of termination. In such event, this Agreement shall cease to have effect as respects income derived during the taxable years beginning on or after the first day of January in the following calendar year.

Done at Beijing on the thirtieth day of April, 1984, in duplicate in the Chinese and English languages, both texts being equally authentic.

For the Government of the PRC:	For the Government of the United States of America:
Zhao Ziyang (Signed)	Ronald Reagan (Signed)

Protocol to Agreement

Beijing STATE COUNCIL BULLETIN in Chinese No 17, 30 Jun 85 pp 570-572

[Protocol of the Agreement between the Government of the PRC and the Government of the United States of America on the Avoidance of Double Taxation and Tax Evasion]

[Text] At the signing of the Agreement between the Government of the PRC and the Government of the United States of America on the Avoidance of Double Taxation and Tax Evasion (hereinafter referred to as "the Agreement"), the undersigned have agreed upon the following provisions which form an integral part of the Agreement.

1. Nothing in this Agreement shall restrict in any manner reliefs for tax purposes which are or may hereafter be accorded in a Contracting State to the other Agreement by the laws of the first-mentioned Contracting State or any agreement between the Governments of the Contracting States.

2. Notwithstanding the provisions of this Agreement, the United States may impose taxes on its citizens. Except where the provisions of paragraph 2 of Article 8, paragraph 2 of Article 17, and Articles 18, 19, 20, 22, 23, 24 and 26 apply, the United States may impose taxes on its residents (in accordance with the provisions of Article 4).

3. Notwithstanding the provisions of this Agreement, the United States may levy taxes in respect of social security, private holding companies and accumulated earnings. The United States shall, within a taxable year, exempt a Chinese company, or Chinese companies, which is or are wholly owned, either directly or indirectly, by an individual who is a resident of China (not an American citizen), by the Chinese Government or by an institution wholly

owned by the Chinese Government, from private holding company tax and accumulated earnings tax payable in that taxable year.

4. The term "person" in Article 3 of this Agreement shall include legacy or trust.

5. Where the provisions of paragraph 2 of Article 4 of this Agreement apply, the competent authorities of the Contracting States shall go by the provisions of paragraph 2 of Article 4 of the United Nations Model Pact on Double Taxation between Developed and Developing Countries.

6. With reference to paragraph 3 of Article 11 of this Agreement, it has been mutually agreed that tax on royalties paid in return for the leasing of industrial, commercial or scientific equipment shall only be levied on 70 percent of the gross amount of such royalties.

7. It has been mutually agreed that the competent authorities of the Contracting States may, through consultation, deny reliefs mentioned in Article 9, 10 and 11 of this Agreement to a company of a third country which was set up primarily for the purpose of enjoying reliefs accorded by this Agreement.

8. This Agreement shall not affect the application of the Agreement on the Mutual Exemption of Taxes of Income from Maritime and Air Transport Enterprises concluded by the two Governments at Beijing on the fifth day of March, 1982.

Done at Beijing on the thirtieth day of April, 1984, in duplicate in the Chinese and English languages, both texts being equally authentic.

For the Government of the PRC:	For the Government of the United States of America:
Zhao Ziyang (Signed)	Ronald Reagan (Signed)

Beijing, 30 April, 1984

Mr Ronald Reagan, President of the United States of America,

Dear Sir,

Your letter of today has reached my hands, the content of which reads:

"Dear Sir,

It is my honor to mention to you the Agreement on the Avoidance of Double Taxation and Tax Evasion signed today between the Government of the United States of America and the Government of the PRC (hereinafter referred to as "the Agreement"), and, on behalf of the Government of the United States of America, I hereby affirm the following understanding between the two Governments:

Both Governments have agreed not to stipulate provisions regarding liberal credit for tax purposes under Article 22 of this Agreement. However, the Agreement shall be revised to include provisions regarding liberal credit for tax purposes if the United States of America revises its laws in this regard, or enters into an agreement with any other country on this matter.

It is my honor to request that you affirm the aforesaid understanding on behalf of your Government.

Best regards."

It is my honor to endorse, on behalf of the Government of the PRC, the understanding referred to in your letter.

Best regards.

Zhao Ziyang (Signed), Premier of
the State Council of the PRC

* * *

Beijing, 30 April, 1984

Mr Zhao Ziyang, Premier of the State Council of the PRC,

Dear Sir,

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Both Governments have agreed not to stipulate provisions regarding liberal credit for tax purposes under Article 22 of this Agreement. However, the Agreement shall be revised to include provisions regarding liberal credit for tax purposes if the United States of America revises its laws in this regard, or enters into an agreement with any other country on this matter.

It is my honor to request that you affirm the aforesaid understanding on behalf of your Government.

Best regards.

Ronald Reagan (Signed), President
of the United States of America

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- END -